

DIVISION II

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE**

CA05-1392

May 24, 2006

JEFFREY PACE

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F014197]

V.

AFFIRMED

CITY OF BENTON, ARKANSAS, ET
AL.

APPELLEES

Appellant in this workers' compensation case sustained a neck injury in his employment as a fireman. He requested vocational disability benefits consisting of reimbursement and payment for a course of study to become a registered nurse that he began without seeking employment elsewhere and without consulting appellee. The Arkansas Workers' Compensation Commission, relying on the testimony of a vocational expert, found that appellant had the education, experience, and ability to reenter the workforce in employment comparable to his prior employment as a fireman without the need for rehabilitation on the scale demanded by appellant. On appeal, appellant asserts that the Commission erred in finding that he failed to show that the requested vocational rehabilitation program was reasonable in relation to his disability. We affirm.

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person

might accept as adequate to support a conclusion. *Cottage Café, Inc. v. Collette*, ___ Ark. App. ___, ___ S.W.3d ___ (February 1, 2006). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Questions of weight and credibility are within the sole province of the Commission, which is not required to believe the testimony of the claimant or of any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003). Once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Id.*

Arkansas Code Annotated § 11-9-505(b)(1) (Repl. 2002) provides that, in addition to benefits otherwise provided, an employee entitled to receive compensation benefits for permanent disability and who has not been offered an opportunity to return to work or re-employment assistance shall be paid necessary costs of a program of vocational rehabilitation if the Commission finds that the program is reasonable in relation to the disability sustained by the employee. Here, the Commission found that the rehabilitation program requested by appellant – a two-year program intended to qualify him to work as a registered nurse – was not reasonable in relation to appellant's disability. Appellant's arguments revolve around questions going to the weight and credibility of the evidence rather than the sufficiency thereof. In finding that appellant had failed to prove that the requested rehabilitation program was reasonable, the Commission relied on the testimony of a vocational expert who opined that, at the time appellant's condition stabilized, he retained transferable skills that should have allowed him to reenter the workforce with comparable employment without need for the ambitious program he undertook on his own initiative. This finding is supported by

substantial evidence and, because we think reasonable minds could so conclude, we affirm the Commission's decision.

Affirmed.

ROBBINS and BAKER, JJ., agree.